

foreign trust at the beginning of the first taxable year beginning after December 31, 1996.

Under section 1494(a), the excise tax imposed by section 1491 is due and payable at the time of the transfer. Treasury and the Service expect to issue regulations under section 1494 that will provide that any excise tax due on a transfer of assets to a foreign trust as a result of a change in trust status may be paid by attaching Form 926, and any applicable excise tax, to the trust's income tax return for the taxable year in which the transfer occurs. If the excise tax is not paid until the trust's income tax return for the year is filed, interest must be paid on the amount of excise tax due at the rates determined under section 6621, with respect to the period between the date on which the transfer occurred and the date on which the excise tax is actually paid. Until regulations are issued, the guidance provided by this section of the notice may be relied on by taxpayers. For penalties applicable for failure to report a transfer of property described in section 1491, see Act section 1902, adding section 1494(c) and Notice 96-60, 1996-49 I.R.B. 7.

In the case of an existing domestic trust that has relied in good faith on the first section of this notice to continue to file as a domestic trust, but fails to meet the criteria in section 7701(a)(30) by the end of the two-year period, the trustee must make a return on Form 926 no later than thirty day after the end of the two-year period to report a section 1491 transfer that occurs on the change in the trust's status, and to pay any excise tax and interest due. Form 926 may be attached to an amended return filed by the trustee for the first taxable year of the trust ending after December 31, 1996. If Form 926 is filed no later than thirty days after the end of the two-year period, no penalties will be imposed under section 1494(c).

Under section 1492, the excise tax imposed by section 1491 shall not apply to: transfers to certain exempt organizations (section 1492(1)); transfers described in section 367 (section 1492(2)(A)); transfers with respect to which an election has been made to apply principles similar to the principles of section 367 (section 1492(2)(B)); or transfers with respect to which an election has been made under section 1057 (section 1492(3)). A transfer to a foreign trust that occurs as a result of a change in trust status from domestic to foreign

may be nontaxable under sections 1492(1) and (3). Such a transfer cannot be nontaxable under section 1492(2)(A) because the transfers described in section 367 are limited to transfers to foreign corporations.

Treasury and the Service are studying whether it is appropriate to allow a domestic trust that becomes a foreign trust to elect to apply principles similar to the principles of section 367 under section 1492(2)(B) and, if so, how such principles should be applied. Until further guidance is provided, a domestic trust that becomes a foreign trust may not avoid the section 1491 excise tax by electing principles similar to the principles of section 367, unless the trust obtains a private letter ruling with respect to the application of the principles of section 367 to its particular facts.

#### PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1506.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this notice are in the sections headed *Additional Time to Comply with New Domestic Trust Criteria* and *Election to Apply New Trust Criteria Retroactively*. This information is required by the IRS to assure compliance with the new provisions of the Small Business Job Protection Act of 1996. The likely respondents are individuals, business or other for-profit institutions, and not-for-profit institutions.

The estimated total annual reporting burden is 550 hours.

The estimated average annual burden per respondent is 27 minutes. The estimated number of respondents is 1,200.

The estimated annual frequency of responses is annually.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### DRAFTING INFORMATION

The principal author of this notice is Wendy Stanley of the Office of Associate Chief Counsel (International). For further information regarding sections 1491 through 1494 contact Ms. Stanley on (202) 622-3860 (not a toll-free call). For further information regarding sections 7701(a)(30) and (31) contact James A. Quinn on (202) 622-3060 (not a toll-free call).

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26 CFR 1.127-2: Educational Assistance Programs.

#### Definitions Relating to Application of Exclusion Under Section 127 of the Internal Revenue Code

##### Notice 96-68

This notice provides guidance regarding certain definitions affecting the proper tax treatment of educational assistance received by employees under § 127 of the Internal Revenue Code as amended by the Small Business Job Protection Act of 1996, Pub. L. 104-188 (the "Act").

Section 1202 of the Act restores the exclusion from gross income for up to \$5,250 of educational assistance provided under an educational assistance program described in § 127, effective for an employee's first taxable year beginning after December 31, 1994. The Act amends the definition of "educational assistance" to provide that, for graduate level courses, the exclusion does not apply to expenses relating to courses "beginning after June 30, 1996." For this purpose, a "graduate level course" will be treated as meaning any course taken by an employee who has a bachelor's degree or is receiving credit toward a more advanced degree, if the particular course can be taken for credit by any individual in a program leading to a law, business, medical, or other advanced academic or professional degree. Section 127(c)(1). This is the same definition set forth in Notice 89-33, 1989-1 C.B. 674, with respect to amendments made by the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, relating to graduate level courses.

The amendment of the term "educational assistance" to exclude graduate level courses applies to courses beginning after June 30, 1996. Similarly, the § 127 exclusion only applies with respect to "courses beginning" before a specified date in 1997. For purposes of

both of these provisions, a course ordinarily will be considered to begin on the first regular day of class for the course. The first regular day of class for any course that is offered during a regular academic term at an educational institution will be considered to be the first day on which regular classes generally begin for courses offered during that term. A regular academic term during which a course is offered might be, for example, a semester or, if the semester consists of more than one session, the session during which the course is offered. The date on which an individual registers for or enrolls in a course does not determine when the course begins.

For example, assume an employee registers in January 1996 for a graduate

level independent study course for the upcoming summer term. The course consists of working with a professor to write a paper. Other courses offered for the summer term hold their first regular class during the first week of June 1996. The first day on which regular classes are held in the term is Monday, June 3, 1996, and classes continue until August. The employee does not meet with the professor until the second week of July 1996. Under the preceding paragraph, the independent study course would be treated as beginning on or before June 30, 1996 for purposes of § 127. This is because regular classes for courses offered during the summer term in which this course was taken generally began on June 3, 1996.

The amendments to § 127 do not affect the tax treatment of educational benefits under any other section of the Internal Revenue Code including employment related education described in Treas. Reg. § 1.162-5.

#### **FURTHER INFORMATION**

For further information regarding this Notice, contact Monice Rosenbaum of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-6070 (not a toll-free number).

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